



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

USCG-2023-0059

RIN 1625-AA11

Regulated Navigation Area; Hampton Roads, VA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the Chesapeake Bay entrance and Hampton Roads, VA and adjacent waters—Regulated Navigation Area. Officially codified in 2003, the need for this review and update of the Regulated Navigation Area has been prompted by changes in the organizational structure, responsibilities and shipboard requirements over the last 20 years. The Coast Guard is removing outdated or redundant language and requirements, including those related to port security. This action will provide administrative changes and amend vessel reporting requirements operating within the Regulated Navigation Area during Maritime Security Level 1.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0059 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Ashley Holm, Sector Virginia Waterways Management Division, U.S. Coast Guard; telephone 757-668-5581, email Ashley.E.Holm@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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| AIS | Automatic Identification System |
| CFR | Code of Federal Regulations |
| DHS | Department of Homeland Security |
| FR | Federal Register |
| JEBLCFS | Joint Expeditionary Base Little Creek-Fort Story |
| JHOC | Joint Harbor Operations Center |
| MARSEC | US Coast Guard Maritime Security Level |
| NPRM | Notice of proposed rulemaking |
| § | Section |
| PWSA | Ports and Waterways Safety Act |
| RNA | Regulated Navigation Area |
| U.S.C. | United States Code |
| USCG | United States Coast Guard |

II. Background Information and Regulatory History

The Chesapeake Bay entrance and Hampton Roads, VA and adjacent waters—Regulated Navigation Area (RNA) was established on June 12, 2003, following the terrorist attacks on September 11, 2001. The U.S. Coast Guard utilized its authority through the Port and Waterways Safety Act (PWSA) to urgently establish RNAs in many of the major ports throughout the United States to control vessel traffic within a port by specifying times of vessel entry, movement, or departure to, from, within, or through ports, harbors, or other waters. The Chesapeake Bay entrance and Hampton Roads, VA and adjacent waters—Regulated Navigation Area was first codified as a final rule in 68 FR 35172 (June 15, 2003) and was reformatted in 72 FR 17409 (April 9, 2007). Since the implementation of the RNA, the Captain of the Port Virginia has had the responsibility and the authority to control vessels within the RNA to protect port infrastructure, port security, and the safety of the waterway.

In the twenty years since the establishment of this RNA, updates to Coast Guard nomenclature and port security requirements have made language in this RNA obsolete.

In response, on March 14, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Regulated Navigation Area; Hampton Roads, VA (FR 04864). There, we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this RNA update. During the comment period that ended April 13, 2023, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1231). The Captain of the Port Virginia (COTP) has determined the need to remove outdated or redundant language and requirements to make the rule easier to comply with and understand.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published March 14, 2023. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule will make administrative revisions to update certain names and language as well as amend port security requirements. Below we provide a description and reasoning for each revision being made. All other sections not mentioned shall remain unchanged.

33 CFR 165.501(b) - Definitions

The Coast Guard is revising the definition for *Designated representative of the Captain of the Port* in paragraph (b) of 33 CFR 165.501 to no longer include “Joint Harbor Operations Center Watchstander.” Previously, assigned active-duty Navy sailors worked within the Sector Virginia Command Center, formerly called the Joint Harbor Operations Center (JHOC). In 2010, the JHOC was disestablished.

33 CFR 165.501(c) – Applicability

The Coast Guard is expanding the exemption in paragraph (c) to include vessels engaged in “search and rescue” operations. Following the requirements of this rule is impracticable for these type of operations, as they would impede or slow operations thus hindering the chances of a successful rescue.

33 CFR 165.501(d) - Regulations

The Coast Guard is updating paragraph (d) to reflect name changes in Naval Commands located within the RNA. In paragraph (d)(1)(iii), “Commander, Naval Amphibious Base Little Creek” is now named, “Commander, Joint Expeditionary Base Little Creek-Fort Story (JEBLCFS).” The Joint Expeditionary Base is comprised of the former Naval Amphibious Base Little Creek and the Army Post of Fort Story, which were merged under a single command on October 1, 2009.

In paragraph (d)(6), the requirement for ‘navigational charts’ is removed as this is redundant to vessel requirements already enforced by in 33 CFR 164.33.

In paragraph (d)(9), the stipulation is added so that the paragraph only applies when the Commandant or Captain of the Port sets MARSEC level 2 or 3. The requirements of this provision are no longer necessary at MARSEC level 1 as a result of current Automatic Identification System (AIS) carriage regulations and Notice of Arrival regulations enforced by 33 CFR Subpart C. The requirements are still in effect during times of heightened security and have been modified to reflect such.

The removal of paragraph (d)(9)(ii) is necessary as this requirement is redundant to the regulations found in 33 CFR Subchapter H, Maritime Security and conflicts with established regulations governing other Federal Agencies. In paragraph (d)(9)(iv), “Joint Harbor Operations Center” has been removed as it has since been disestablished.

Finally, language in paragraph (f)(1) is amended to give the Captain of the Port maximum authority and discretion permitted by law to order the movement of a vessel or

vessels out of concern for all hazards, whether safety or security in nature: prohibit entry, restrict or direct movement within, or order departure from the RNA. This will allow the Coast Guard to readily fulfil its role of public and port safety during emergent situations within the RNA.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the reasoning that this rule makes only minor amendments to an established rule and does not alter its original intent or purpose. The revisions here will not significantly change the requirements or behavior of vessels in the RNA and would have little to no economic impact.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have

a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the RNA may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and

preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves minor administrative amendments to the text of the existing Hampton Roads RNA. The revisions made in this rule making would not significantly, if at all, differ from the present impact the Hampton Roads RNA has on the environment which was determined to be not significantly impactful. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is

available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Revise §165.501 to read as follows:

§165.501 Chesapeake Bay entrance and Hampton Roads, VA and adjacent waters—Regulated Navigation Area.

(a) *Location.* The waters enclosed by the shoreline and the following lines are a Regulated Navigation Area:

(1) *Offshore Zone.* A line drawn due East from the mean low water mark at the North Carolina and Virginia border at latitude 36°33'03" N, longitude 75°52'00" W, to the Territorial Seas boundary line at latitude 36°33'05" N, longitude 75°36'51" W, thence generally Northeastward along the Territorial Seas boundary line to latitude 38°01'39" N,

longitude 74°57'18" W, thence due West to the mean low water mark at the Maryland and Virginia border at latitude 38°01'39" N, longitude 75°14'30" W, thence South along the mean low water mark on the Virginia coast, and eastward of the Colregs Demarcation Lines across Chincoteague Inlet, Assawoman Inlet, Gargathy Inlet, Metompkin Inlet, Wachapreague Inlet, Quinby Inlet, Great Machipongo Inlet, Sand Shoal Inlet, New Inlet, Ship Shoal Inlet and Little Inlet, to the Colregs Demarcation Line across the mouth of Chesapeake Bay, continuing south along the Virginia low water mark and eastward of the Colregs Demarcation Line across Rudee Inlet to the point of beginning. All positions reference NAD 83.

(2) *Inland zone.* The waters enclosed by the shoreline and the following lines:

(i) A line drawn across the entrance to Chesapeake Bay between Wise Point and Cape Charles Light, and then continuing to Cape Henry Light.

(ii) A line drawn across the Chesapeake Bay between Old Point Comfort Light and Cape Charles City Range "A" Rear Light.

(iii) A line drawn across the James River along the eastern side of U.S. Route 17 highway bridge, between Newport News and Isle of Wight County, Virginia.

(iv) A line drawn across Chuckatuck Creek along the northern side of the north span of the U.S. Route 17 highway bridge, between Isle of Wight County and Suffolk, Virginia.

(v) A line drawn across the Nansemond River along the northern side of the Mills Godwin (U.S. Route 17) Bridge, Suffolk, Virginia.

(vi) A line drawn across the mouth of Bennetts Creek, Suffolk, Virginia.

(vii) A line drawn across the Western Branch of the Elizabeth River along the eastern side of the West Norfolk Bridge, Portsmouth, Virginia.

(viii) A line drawn across the Southern Branch of the Elizabeth River along the northern side of the I-64 highway bridge, Chesapeake, Virginia.

(ix) A line drawn across the Eastern Branch of the Elizabeth River along the western side of the west span of the Campostella Bridge, Norfolk, Virginia.

(x) A line drawn across the Lafayette River along the western side of the Hampton Boulevard Bridge, Norfolk, Virginia.

(xi) A line drawn across Little Creek along the eastern side of the Ocean View Avenue (U.S. Route 60) Bridge, Norfolk, Virginia.

(xii) A line drawn across Lynnhaven Inlet along the northern side of Shore Drive (U.S. Route 60) Bridge, Norfolk, Virginia.

(b) *Definitions.* In this section:

CBBT means the Chesapeake Bay Bridge Tunnel.

Coast Guard Patrol Commander is a Coast Guard commissioned, warrant or petty officer who has been designated by the Commander, Coast Guard Sector Virginia.

Designated representative of the Captain of the Port means a person, including the command duty officer at Coast Guard Sector Virginia or the Coast Guard or Navy Patrol Commander who has been authorized by the Captain of the Port to act on his or her behalf and at his or her request to carry out such orders and directions as needed. All patrol vessels shall display the Coast Guard Ensign at all times when underway.

I-664 Bridge Tunnel means the Monitor Merrimac Bridge Tunnel.

Inland waters means waters within the COLREGS Line of Demarcation.

Thimble Shoal Channel consists of the waters bounded by a line connecting Thimble Shoal Channel Lighted Bell Buoy 1TS, thence to Thimble Shoal Lighted Gong Buoy 17, thence to Thimble Shoal Lighted Buoy 19, thence to Thimble Shoal Lighted Buoy 21, thence to Thimble Shoal Lighted Buoy 22, thence to Thimble Shoal Lighted Buoy 18, thence to Thimble Shoal Lighted Buoy 2, thence to the beginning.

Thimble Shoal North Auxiliary Channel consists of the waters in a rectangular area 450 feet wide adjacent to the north side of Thimble Shoal Channel, the southern

boundary of which extends from Thimble Shoal Channel Lighted Buoy 2 to Thimble Shoal Lighted Buoy 18.

Thimble Shoal South Auxiliary Channel consists of the waters in a rectangular area 450 feet wide adjacent to the south side of Thimble Shoal Channel, the northern boundary of which extends from Thimble Shoal Channel Lighted Bell Buoy 1TS, thence to Thimble Shoal Lighted Gong Buoy 17, thence to Thimble Shoal Lighted Buoy 19, thence to Thimble Shoal Lighted Buoy 21.

(c) *Applicability.* This section applies to all vessels operating within the Regulated Navigation Area, including naval and public vessels, except vessels that are engaged in the following operations:

- (1) Law enforcement.
- (2) Search and rescue.
- (3) Servicing aids to navigation.
- (4) Surveying, maintenance, or improvement of waters in the Regulated

Navigation Area.

(d) *Regulations.* (1) *Anchoring restrictions.* No vessel over 65 feet long may anchor or moor in the inland waters of the Regulated Navigation Area outside an anchorage designated in § 110.168 of this title, with these exceptions:

- (i) The vessel has the permission of the Captain of the Port.
- (ii) Only in an emergency, when unable to proceed without endangering the safety of persons, property, or the environment, may a vessel anchor in a channel.
- (iii) A vessel may not anchor within the confines of Little Creek Harbor, Desert Cove, or Little Creek Cove without the permission of the Captain of the Port or designated representative. The Captain of the Port shall consult with the Commander, Joint Expeditionary Base Little Creek-Fort Story, before granting permission to anchor within this area.

(2) *Anchoring detail requirements.* A self-propelled vessel over 100 gross tons, which is equipped with an anchor or anchors (other than a tugboat equipped with bow fenderwork of a type of construction that prevents an anchor being rigged for quick release), that is underway within two nautical miles of the CBBT or the I-664 Bridge Tunnel shall station its personnel at locations on the vessel from which they can anchor the vessel without delay in an emergency.

(3) *Secondary towing rig requirements on inland waters.* (i) A vessel over 100 gross tons may not be towed in the inland waters of the Regulated Navigation Area unless it is equipped with a secondary towing rig, in addition to its primary towing rig, that:

(A) Is of sufficient strength for towing the vessel.

(B) Has a connecting device that can receive a shackle pin of at least two inches in diameter.

(C) Is fitted with a recovery pickup line led outboard of the vessel's hull.

(ii) A tow consisting of two or more vessels, each of which is less than 100 gross tons, that has a total gross tonnage that is over 100 gross tons, shall be equipped with a secondary towing rig between each vessel in the tow, in addition to its primary towing rigs, while the tow is operating within this Regulated Navigation Area. The secondary towing rig must:

(A) Be of sufficient strength for towing the vessels.

(B) Have connecting devices that can receive a shackle pin of at least two inches in diameter.

(C) Be fitted with recovery pickup lines led outboard of the vessel's hull.

(4) *Thimble Shoals Channel controls.* (i) A vessel drawing less than 25 feet may not enter the Thimble Shoal Channel, unless the vessel is crossing the channel. Masters should consider the squat of their vessel based upon vessel design and environmental

conditions. Channel crossings shall be made as perpendicular to the channel axis as possible.

(ii) Except when crossing the channel, a vessel in the Thimble Shoal North Auxiliary Channel shall proceed in a westbound direction.

(iii) Except when crossing the channel, a vessel in the Thimble Shoal South Auxiliary Channel shall proceed in an eastbound direction.

(5) *Restrictions on vessels with impaired maneuverability*--(i) *Before entry.* A vessel over 100 gross tons, whose ability to maneuver is impaired by heavy weather, defective steering equipment, defective main propulsion machinery, or other damage, may not enter the Regulated Navigation Area without the permission of the Captain of the Port.

(ii) *After entry.* A vessel over 100 gross tons, which is underway in the Regulated Navigation Area, that has its ability to maneuver become impaired for any reason, shall, as soon as possible, report the impairment to the Captain of the Port.

(6) *Requirements for navigation charts, radars, and pilots.* No vessel over 100 gross tons may enter the Regulated Navigation Area, unless it has on board:

(i) Corrected paper or electronic charts of the Regulated Navigation Area.

(ii) An operative radar during periods of reduced visibility;

(iii) When in inland waters, a pilot or other person on board with previous experience navigating vessels on the waters of the Regulated Navigation Area.

(7) *Emergency procedures.* (i) Except as provided in paragraph (d)(7)(ii) of this section, in an emergency any vessel may deviate from the regulations in this section to the extent necessary to avoid endangering the safety of persons, property, or the environment.

(ii) A vessel over 100 gross tons with an emergency that is located within two nautical miles of the CBBT or I-664 Bridge Tunnel shall notify the Captain of the Port of its location and the nature of the emergency, as soon as possible.

(8) *Vessel speed limits*--(i) *Little Creek*. A vessel may not proceed at a speed over five knots between the Route 60 Bridge and the mouth of Fishermans Cove (Northwest Branch of Little Creek).

(ii) *Southern Branch of the Elizabeth River*. A vessel may not proceed at a speed over six knots between the junction of the Southern and Eastern Branches of the Elizabeth River and the Norfolk and Portsmouth Belt Line Railroad Bridge between Chesapeake and Portsmouth, Virginia.

(iii) *Norfolk Harbor Reach*. Nonpublic vessels of 300 gross tons or more may not proceed at a speed over 10 knots between the Elizabeth River Channel Lighted Gong Buoy 5 of Norfolk Harbor Reach (southwest of Sewells Point) at approximately 36°58'00" N, 076°20'00" W, and gated Elizabeth River Channel Lighted Buoys 17 and 18 of Craney Island Reach (southwest of Norfolk International Terminal at approximately 36°54'17" N, and 076°20'11" W).

(9) *Port security requirements*. This paragraph shall only apply when the Commandant or the Captain of the Port sets MARSEC Level 2 or 3, as detailed in 33 CFR Part 101, for any area, operation, or industry within the Regulated Navigation Area. Vessels in excess of 300 gross tons, including tug and barge combinations in excess of 300 gross tons (combined), shall not enter the Regulated Navigation Area, move within the Regulated Navigation Area, or be present within the Regulated Navigation Area, unless they comply with the following requirements:

(i) Obtain authorization to enter the Regulated Navigation Area from the designated representative of the Captain of the Port prior to entry. All vessels entering or remaining in the Regulated Navigation Area may be subject to a Coast Guard boarding.

(ii) Report any departure from or movement within the Regulated Navigation Area to the designated representative of the Captain of the Port prior to getting underway.

(iii) The designated representative of the Captain of the Port is the Sector Command Center (SCC) which shall be contacted on VHF-FM channel 12, or by calling (757) 668-5555.

(iv) In addition to the authorities listed in this part, this paragraph is promulgated under the authority under 46 U.S.C. 70116.

(e) *Waivers.* (1) The Captain of the Port may, upon request, waive any regulation in this section.

(2) An application for a waiver must state the need for the waiver and describe the proposed vessel operations.

(f) *Control of vessels within the regulated navigation area.* (1) When necessary to avoid hazard to vessel traffic, facility or port infrastructure, or the public, the Captain of the Port may prohibit entry into the regulated area, direct the movement of a vessel or vessels, or issue orders requiring vessels to anchor or moor in specific locations.

(2) If needed for the maritime, commercial or safety and security interests of the United States, the Captain of the Port may direct a vessel or vessels to move from its current location to another location within the Regulated Navigation Area, or to leave the Regulated Navigation Area completely.

(3) The master of a vessel within the Regulated Navigation Area shall comply with any orders or directions issued to the master's vessel by the Captain of the Port.

Dated: May 17, 2023.

Shannon N. Gilreath,
Rear Admiral, U.S. Coast Guard,

Commander, Fifth Coast Guard District.

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